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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 BERNARD FLORES,) Civil No. 10cv1370 AJB (BGS)
12)
13 Petitioner,) **ORDER: (1) ADOPTING REPORT**
14 v.) **AND RECOMMENDATION [Doc.**
15 GEORGE NEOTTI, Warden,) **No. 16]; (2) GRANTING MOTION TO**
16 Respondent.) **DISMISS WITH PREJUDICE; AND (3)**
) **DENYING CERTIFICATE OF**
) **APPEALABILITY**

17 Before the Court is Bernard Flores's Petition for writ of habeas corpus pursuant to 28 U.S.C. §
18 2254. Pending before the Court is Respondent's motion to dismiss the petition, filed March 25, 2011.
19 (Doc. No. 14.) Petitioner filed an opposition on April 21, 2011. (Doc. No. 15.)

20 The Court referred the matter to Magistrate Judge Bernard G. Skomal, who issued a Report and
21 Recommendation ("R&R") recommending the Court dismiss the Petition on the merits and decline to
22 issue a certificate of appealability. (R&R, Doc. No. 16.)


23 Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district judge's
24 duties in connection with a magistrate judge's report and recommendation. The district judge must
25 "make a *de novo* determination of those portions of the report to which objection is made," and "may
26 accept, reject, or modify, in whole or in part, the finding or recommendations made by the magistrate
27 judge." 28 U.S.C. § 636(b)(1); *see also United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989).
28 However, in the absence of timely objection(s), the Court "need only satisfy itself that there is no clear

error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b), Advisory Committee Notes (1983); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

Neither party has timely filed objections to Magistrate Judge Skomal’s Report and Recommendation. (See Order of September 14, 2011, Granting Petitioner Extension of Time to File Objections, Doc. No. 19, (objections due by September 28, 2011).) Having reviewed the report and recommendation, the Court finds that Magistrate Judge Skomal’s Report and Recommendation is thorough, well reasoned, and contains no clear error. Accordingly, the Court hereby: (1) **ADOPTS** Magistrate Judge Skomal’s Report and Recommendation; (2) **GRANTS** Defendant’s Motion to Dismiss with Prejudice, [Doc. No. 14], and (3) **DECLINES** to issue a certificate of appealability.¹

IT IS SO ORDERED.

DATED: January 5, 2012


Hon. Anthony J. Battaglia
U.S. District Judge

¹ When a district court enters a final order adverse to the applicant in a habeas proceeding, it must either issue or deny a certificate of appealability. Rule 11(a) of the Rules Governing Section 2254 Cases. A certificate of appealability is required to appeal a final order in a habeas proceeding. 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability is appropriate only where the petitioner makes “a substantial showing of the denial of a constitutional right.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Under this standard, the petitioner must demonstrate that reasonable jurists could debate whether the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further. 28 U.S.C. § 2253; *Slack v. McDaniel*, 529 U.S. 473, 474 (2000).